

o/c

**IN THE COURT OF COMMON PLEAS, CLINTON COUNTY, PENNSYLVANIA
CRIMINAL**

COMMONWEALTH OF PENNSYLVANIA)

NO. 175-2008A

vs)

PCRA)

FABIAN D. SMART)

Defendant)

FILED
 CLINTON COUNTY, PA
 1 2008 FEB-22 P 4:02
 SHERRY L. YARRISON
 PROTHONOTARY & CLERK

**COMMONWEALTH'S RESPONSE TO SUPPLEMENTAL AMENDED PCRA
PETITION**

1. Denied. It is denied that trial counsel was ineffective for failing to file a motion to compel discovery of specific items of physical evidence for purposes of forensic testing and/or to have such evidence tested by an expert. It is averred to the contrary that counsel in this matter were extremely competent and pursued any and all avenues of defense on behalf of the Petitioner. Strict proof of the alleged ineffectiveness of counsel is demanded at the time of trial of this cause.
2. Denied. The Commonwealth is without sufficient evidence with which to form a belief as to the truth or falsity of this allegation and the same is denied. The Commonwealth is unable to proceed with discovery with respect to this allegation due to the unavailability of Attorney Travis. It is respectfully requested that this matter be continued for further hearing upon the availability of Attorney Travis, who is alleged to have been the attorney contacted by the juror in question.

3. Denied. It is denied that questions during voir dire were relating to racial bias were answered falsely by the perspective members of the panel and strict proof thereof is demanded at the time of the trial of this cause. It is averred to the contrary that trial counsel was extremely competent and thorough and the voir dire process of the jury selection and followed accepted voir dire procedure.
4. Denied. It is denied that Petitioner's rights were violated in any manner by jurors falsely responding to questions during voir dire relating to racial bias. It is averred to the contrary that the voir dire process was properly conducted and in accordance with standard accepted practice under the circumstances. Strict proof thereof is demanded at the time of the trial of this cause.
5. Denied. It is denied that trial counsel was ineffective in any manner. It is averred to the contrary that the Defendant/Petitioner received superb representation by seasoned veteran defense attorneys without any financial limitations. It is averred to the contrary that the Defendant received every benefit of the doubt at the time of the trial, was provided with effective and competent co-counsel, and must be denied the right to a new trial.

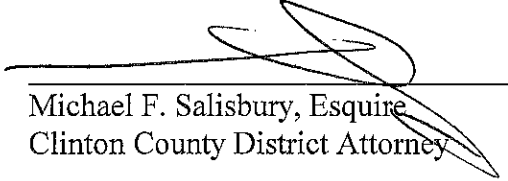
Respectfully submitted,

By: 

Michael F. Salisbury, District Attorney
Counsel for the Commonwealth
322 East Water Street
Lock Haven, PA 17745
ID #36957
(570) 893-4141

VERIFICATION

I, **MICHAEL F. SALISBURY, ESQUIRE, CLINTON COUNTY DISTRICT ATTORNEY**, verify that the statements made in this Commonwealth's Response to Supplemental Amended PCRA Petition are true and correct. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.P. Section 4904, relating to unsworn falsification to authorities.



Michael F. Salisbury, Esquire
Clinton County District Attorney

Dated: 2-22-08

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CRIMINAL

COMMONWEALTH OF PENNSYLVANIA)
)
 vs)
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 FABIAN DESMOND SMART,)
 Defendant)

No. 175-02

CERTIFICATE OF SERVICE

FILED
CLINTON COUNTY, PA

1 2008 FEB 22 P 4: 02

SHERY L. YARRISON
PROTHONOTARY & CLERK

This 22nd day of FEBRUARY, 2008, I, **MICHAEL F. SALISBURY**,

CLINTON COUNTY DISTRICT ATTORNEY, do hereby certify that a true and correct copy of the Commonwealth's Response to Supplemental Amended PCRA Petition in the above-referenced matter was served upon David A. Strouse, Esquire, Attorney for Defendant above named, by depositing the same in his box designated for service in the Prothonotary's Office at the Clinton County Courthouse, Lock Haven, Pennsylvania, which service satisfies the requirements of Pa.

R.A.P. 121:

By: _____

Michael F. Salisbury, Esquire
Clinton County District Attorney
322 East Water Street
Lock Haven, PA 17745